

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DAVID P. DONOVAN,

Plaintiff,

v.

BETH A. WILKINSON,

Defendant.

Civil Action No. 1:20cv01344 (AJT/IDD)

**INTERVENOR’S SEALED RESPONSE JOINING PLAINTIFF IN OPPOSITION TO
BETH WILKINSON’S PRAECIPE REGARDING EXHIBIT W6 TO HER
DECLARATION**

On June 9, 2021, Plaintiff David Donovan (“Plaintiff” or “Mr. Donovan”) filed a sealed Response in Opposition to Beth Wilkinson’s Praecipe Regarding Exhibit W6 to Her Declaration. *See* Dkt. No. 218. Intervenor Pro-Football, Inc., d/b/a the Washington Football Team (the “Team” or “Intervenor”), hereby joins the arguments made by Plaintiff in his June 9 Response. The Team further seeks to enlist the Court’s assistance in preventing Defendant Beth Wilkinson (“Defendant” or “Ms. Wilkinson”) from [REDACTED] disclosing information protected by the Team’s attorney-client privilege.

This litigation began as an effort by Mr. Donovan to preclude Ms. Wilkinson from publicly disclosing confidential and privileged information. The Team was not an original party to the litigation. Nevertheless, Ms. Wilkinson has used the existence of this litigation [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Irrespective of the merits of that position, Mr. Donovan's lawsuit is now dismissed. It has been dismissed for months, and the only issue that remains before the Court is how much of the Team's privileged and confidential information will be unsealed and subjected to public scrutiny.

Accordingly, there is nothing left, even arguably, against which Ms. Wilkinson must "defend." Yet, on May 31, 2021 — a federal holiday — at 2:59 p.m., Defendant's counsel sent an urgent e-mail to Plaintiff's and the Team's counsel in order to solicit each counsel's position on a motion to divulge additional privileged information to the Court related to a legal pleading filed in November 2020, when this case was still pending. Defendant's counsel graciously gave the Team until 9:00 a.m. the following morning to articulate their position on the motion.

It is difficult to imagine material that more strongly implicates the protections provided by the attorney-client privilege: [REDACTED] [REDACTED]

[REDACTED].¹

Undersigned counsel promptly informed Defendant's counsel that they objected, "in the strongest possible terms, to Ms. Wilkinson taking further steps to disclose to anyone, including the Court, the purported content of a privileged conversation." See **Exhibit A**, attached hereto (E-mail from Stuart Nash to Thomas Connolly, June 1, 2021 at 4:55 PM). Undersigned counsel pointed out that Mr. Donovan's lawsuit had been dismissed, and that there was therefore no remaining

¹ To be clear, the Team disputes Ms. Wilkinson's account of the conversation in question, [REDACTED]
[REDACTED]
[REDACTED]

matter upon which Ms. Wilkinson needed to “defend herself.” *Id.* at 1. Similarly, Plaintiff also objected to Ms. Wilkinson’s proposed motion.

In the face of the opposition from Plaintiff and the Team, Defendant converted her motion to a “Praecipe,” and filed it anyway. *See* Dkt. No. 215. [REDACTED], Defendant limited herself to a description of [REDACTED], and an offer to produce [REDACTED] if the Court requested them. *Id.* Prior to the filing, undersigned counsel objected once more, on the ground that the Praecipe “continues to disclose [REDACTED] [REDACTED] *See Exhibit B*, attached hereto (E-mail from Stuart Nash to Jared Marx, June 2, 2021 at 8:46 AM).

[REDACTED]
[REDACTED]
[REDACTED] The Team respectfully requests that the Court not [REDACTED] [REDACTED], and that the Court decline her invitation to request the production of additional [REDACTED].

Dated: June 11, 2021

Respectfully submitted,

/s/ John L. Brownlee
John L. Brownlee (VSB No. 37358)
Stuart G. Nash (*pro hac vice*)
Robert J. Farlow (VSB No. 87507)
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*Counsel for Intervenor
Pro-Football, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June 2021, I electronically filed the foregoing document using the Court's CM/ECF system, and a copy of this filing will be sent electronically to the registered participants, as identified on the Notice of Electronic Filing.

/s/ John L. Brownlee
John L. Brownlee (VSB No. 37358)

Counsel for Intervenor
Pro-Football, Inc.

EXHIBIT A

From: [Nash, Stuart G \(WAS - X75158\)](#)
To: [Thomas Connolly](#); [Brownlee, John L \(WAS - X71854, TYS - X78053\)](#); [Hinger, Cathy](#); [Rauscher, Claire](#)
Cc: [Tom Mason](#); [Jared P. Marx](#)
Subject: RE: 2021-05-28 - Motion to substitute exhibit (ks edit) (002).docx
Date: Tuesday, June 01, 2021 4:55:20 PM

Tom:

We oppose the motion.

Moreover, as attorneys for the Team we object, [REDACTED]

[REDACTED]

Putting all that to one side, however, the Donovan v. Wilkinson case has now been dismissed. The only remaining issue is what portion of the case will be unsealed, and thus there is no remaining issue upon which [REDACTED]

[REDACTED]

Finally, I have been made aware that [REDACTED]

[REDACTED]

To the extent that you are intent on going forward with this motion over our objection, we agree that the filing should be under seal.

Regards,

Stuart

From: Thomas Connolly <TConnolly@hwglaw.com>
Sent: Monday, May 31, 2021 2:59 PM
To: Nash, Stuart G (WAS - X75158) <Stuart.Nash@hklaw.com>; Brownlee, John L (WAS - X71854, TYS - X78053) <john.brownlee@hklaw.com>; Hinger, Cathy <Cathy.Hinger@wbd-us.com>; Rauscher, Claire <Claire.Rauscher@wbd-us.com>
Cc: Tom Mason <TMason@hwglaw.com>; Jared P. Marx <JMarx@hwglaw.com>
Subject: FW: 2021-05-28 - Motion to substitute exhibit (ks edit) (002).docx

[External email]

All,

Given the Team's pending objections, several of which relate to the [REDACTED], we will be moving to substitute sealed exhibit W6 to our client's declaration in opposition to preliminary injunction. As Donovan's counsel know from our correspondence last year, in exhibit W6 we appended [REDACTED]

[REDACTED] Both conversations are relevant to this case and both were described in our opposition to preliminary injunction, but the one from July 21 documents [REDACTED].

As our draft motion makes clear, we are not asking to disclose these [REDACTED] to the public. We are providing them because Judge Trenga, and any other court asked to review this matter, should have access to them in the sealed record.

Our motion to substitute, and the corrected W6, are attached. Please let us know by 9am tomorrow your position on the motion to substitute. And regardless of your position on the motion, please confirm that you agree the filing should be under seal rather than accessible to the public.

Thanks,

Tom

EXHIBIT B

From: [Nash, Stuart G \(WAS - X75158\)](#)
To: [Jared P. Marx](#); [Hinger, Cathy](#); [Thomas Connolly](#); [Brownlee, John L \(WAS - X71854_TYS - X78053\)](#); [Rauscher, Claire](#)
Cc: [Tom Mason](#); [Ames, Lela](#)
Subject: RE: 2021-05-28 - Motion to substitute exhibit (ks edit) (002).docx
Date: Wednesday, June 02, 2021 8:46:53 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Jared:

The draft praecipe that you shared with us late last night [REDACTED]
[REDACTED] On behalf of the Team,
we are providing Ms. Wilkinson with notice that the Team objects [REDACTED]
[REDACTED]
[REDACTED]

Regards,

Stuart

From: Jared P. Marx <JMarx@hwglaw.com>
Sent: Tuesday, June 01, 2021 10:59 PM
To: Hinger, Cathy <Cathy.Hinger@wbd-us.com>; Nash, Stuart G (WAS - X75158) <Stuart.Nash@hklaw.com>; Thomas Connolly <TConnolly@hwglaw.com>; Brownlee, John L (WAS - X71854, TYS - X78053) <john.brownlee@hklaw.com>; Rauscher, Claire <Claire.Rauscher@wbd-us.com>
Cc: Tom Mason <TMason@hwglaw.com>; Ames, Lela <Lela.Ames@wbd-us.com>
Subject: RE: 2021-05-28 - Motion to substitute exhibit (ks edit) (002).docx

[External email]

Stuart and Cathy – We disagree with your objections. But out of a desire to try to avoid further litigation, [REDACTED]
[REDACTED]
[REDACTED]